MT LEGISLATIVE HISTORY

Chapter 131 1971

Bill H _____ (S) 39 Original bill & hist. NOC

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 17	✓C	Hearing Date(s)	Jan 13	✓C
	Feb 18	✓C		Jan 21	✓C
	_____	C		Jan 25	✓C
	_____	C		Jan 26	✓C
				Jan 28	✓
Date Out	Feb 18	✓C		Jan 28	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senator Gilfeather asked Senator Stephens when he would like Bill 39 heard. It was decided to hold a public hearing on this bill, possibly in the Governor's Reception Room, on January 21.

The secretary was instructed to notify Mr. Robert Durkee about this hearing of Bill 39.

Senator Gilfeather said he would ask Senator McKeon about Bill 41. The Chairman then asked if anybody knows who has a special interest in this bill.

The secretary was instructed to write to the Presidents of Associated Students of the six Units of the University, also to Carroll College and to Eastern Montana College, regarding Bill 41.

Concerning Senate Bill 4, Senator Turnage said the first amendment of this bill isn't needed and it was decided to amend this bill.

Regarding Senate Bill 51, Senator Gilfeather asked Senator Turnage to see people about this bill.

Senate Bill 40 was brought up before the committee and SENATE BILL 40 WAS GIVEN A DO PASS, AS AMENDED.

It was moved to adjourn the meeting.

Senator P. J. Gilfeather, Chairman

SENATE JUDICIARY COMMITTEE MEETING--January 21, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All the members were present, with the exception of Senator Hafferman who was excused. This meeting was a Public Hearing held in the Governor's Reception Room.

Senator Stephens spoke about Senate Bill 39 and explained it to the committee and the visitors. There were 56 proponents of the bill who signed the Visitor Register.

Colonel Robert McKay of the Montana Highway Patrol spoke in favor of the bill and asked if a change in the wording on page 2, line 16 could be made, changing the word "offense" to "refusal". He explained why he would favor this change. Senators Turnage and Sheehy then asked Mr. McKay questions and it was brought up that a machine called a "breath-o-lizer" would be a very necessary item for the state to have.

Dr. John A. Neuman, a Pathologist from Butte, spoke concerning the many medical aspects of this bill.

Mr. Manley Lucky of Lucky Laboratories, Inc., demonstrated equipment which he said would give an accurate account of the presence of alcohol in the body of the person in question.

Mr. Al Erickson of the Montana Automobile Association commented favorably on the bill. Mrs. Marilyn Koetter, representing the Montana Association of Women Highway Safety Leaders, favored the bill and distributed printed matter concerning it.

Reverend George Harper of the Montana Council of Churches strongly supported this bill. He passed around printed matter regarding it. Mr. Kirk Dewey, Executive Secretary of the Montana Council of Churches, commented in favor of this bill also. Other persons listed on the Register voiced their support of the bill, as did Mr. Bob Durkee of the Montana Tavern Association.

Chairman Gilfeather asked if there were any other persons who wished to speak in favor of the bill. There were none, and the Chairman declared the meeting adjourned.

SENATOR P. J. GILFEATHER, CHAIRMAN

SENATE JUDICIARY COMMITTEE MEETING---January 25, 1971

(Afternoon Session---Contd.)

Senator Gilfeather proposed the following amendment to Section 3, page 1, line 23, by eliminating the words "be available to" and inserting in lieu thereof the words "affect the responsibility of";

Further amend the title of the bill, page 1, line 4 by deleting the word "FIVE" and inserting in lieu thereof the word "TEN";

Further amend Section 1, page 1, line 15 by deleting the word and numeral "five (5)" and inserting in lieu thereof the word and numeral "ten (10)";

Further amend Section 1, page 1, line 15 by deleting the word "substantial";

Further amend Section 2, page 1, line 19 by deleting the words "fifth year" and inserting in lieu thereof the words "tenth year";

Further amend Section 2, page 1, line 19 by deleting the word "substantial";

Further amend Section 4, page 1, line 26 by deleting the word "substantial";

Further amend Section 4, page 1, line 28 by adding after the word "intended" the words "or when a completion certificate is executed, whichever is earlier".

Senator Turnage MOVED THAT SENATE BILL 13, AS AMENDED, DO PASS.

Senate Bill 39 was brought up to the committee and it was discussed at some length. No action was decided upon for it at this meeting.

Senate Bill 34 was taken up and it WAS MOVED BY SENATOR TURNAGE THAT SENATE BILL 34 DO NOT PASS. The committee was in agreement.

The meeting was adjourned, there being no further business.

SENATOR P. J. GILFEATHER, CHAIRMAN

SENATE JUDICIARY COMMITTEE MEETING---January 26, 1971

(Meeting to act on bills, after proponents left)
Page 2

The committee brought up for amendment Senate Bill 39 and it was agreed to amend the title of the bill in line 5 by eliminating the word "content" and inserting in lieu thereof the word "consent". Further amend Section 1, subsection (c) on page 2, lines 16, 17 and 18 by inserting a period (.) after the word "days" in line 16 and striking from said lines the following words: "upon first offense and upon subsequent such offense, within five (5) years thereof, for a period of one (1) year"; further amend Section 1, subsection (c) on page 2, line 18 by deleting the word "offense" and inserting in lieu thereof the word "refusal". Senate Bill 39 AS SO AMENDED DO PASS.

Senate bill 21 was discussed. The Chairman asked Senator Turnage if he could have the bill ready for discussion Jan. 29, and for amendment. Senator Turnage said he would have the bill ready.

Senate Bill 204 was brought up. MOTION BY SENATOR Hafferman that 204 DO NOT PASS, following a brief discussion by the committee members.

Senate Bill 150 was discussed by the committee, at the conclusion of which it WAS MOVED AND SECONDED THAT SENATE BILL 150 DO PASS.

Senate Bill 162 was set for hearing January 27.
Senate Bill 189 was set for hearing February 2.
Senate Bill 198 was set for hearing January 27.
Senate Bill 224 was set for hearing January 30 (recess).
Senate Bill 228 was set for hearing January 27.
Senate Bill 233 was set for hearing February 1.
Senate Bill 239 was set for hearing January 29.
Senate Bill 241 was set for hearing January 28.
Senate Bill 242 was set for hearing January 29.
Senate Bill 246 was set for hearing January 27.
Senate Bill 40 was set for hearing January 28.

There being no further business to come before the committee, the meeting was adjourned.

P. J. Gilfeather

SENATOR P. J. GILFEATHER, CHAIRMAN

SENATE JUDICIARY COMMITTEE MEETING - - January 28, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. All the members were present. This was a Public Hearing and it was held in the Law Library.

Senate Bill 40 was explained by Senator Stephens. He said that unless Senate Bill 40 is passed with Bill 39 we will have put an implied consent statute on the books which does not prohibit drunken drivers from driving. He said further he feels the presumptive limit should be lowered to .10 rather to .15. He then introduced Dr.Pfaff, a Pathologist from Great Falls. The Chairman suggested to Senator Stephens that the lay witnesses could be presented before Dr. Pfaff and in that way Dr. Pfaff could answer all questions at the same time. Mr. Al Goke spoke in favor of this bill. Mrs. Marilyn Cotter of the Montana Association of Women Safety Leaders and the Montana Council of Churches, spoke in favor of this bill.

Dr. Pfaff then explained the different degrees of alcoholic content and how they are detrimental to the driver of a vehicle. He stated that between one-third and one-half of highway accidents last year were related to alcohol consumption. He explained how alcohol makes a driver less aware of a dangerous situation when he is driving and he listed varicus intakes of alcohol and their detrimental effects on a driver, or in fact, on anyone using alcohol in those given amounts.

At the conclusion of his remarks Mr. Robert Durkee, an opponent of the bill, said there was an error of .04 in a breath-o-lizer machine which was referred to when Senate Bill 39 was heard concerning this same matter. He said he has material from some states to the effect that the number of arrests has increased. He also said that if field testing equipment is to be in the hands of a lay person, he doubts the accuracy of it.

Dr. Pfaff refuted Mr. Durkee's remark about the breath-o-lizer and he continued to defend his remarks, saying that every case of testing that was in a questionable limit would be run three times to be absolutely certain of the results. Senator Sheehy and the Doctor discussed the testing machines used for alcohol content. Senator Stephens then thanked the committee. The Chairman said they will take this matter under advisement. He thanked everyone for coming and they left.

SENATE JUDICIARY BILLS

AS AMENDED, DO PASS -- 23 SENATE BILLS

SB-4 -- AS AMENDED DO PASS - To provide for the recission of contracts by buyers from "door-to-door" salesmen

SB-16 - AS AMENDED DO PASS - Relating to proceedings in lieu of probate

SJR-8 - AS AMENDED, BE CONCURRED IN - Supporting the legalization of bingo when entertainment for non-profit purposes

SB-60 - AS AMENDED DO PASS - To prohibit possession of any device designed to open parking meters or vending machines

SB-51 - AS AMENDED DO PASS - To establish a law concerning rescission of automobile liability insurance policies

SB-7 -- AS AMENDED DO PASS - To provide that judgments recovered by highway contractor be satisfied from state highway construction funds

SB-13 --AS AMENDED DO PASS - To provide a period of 5 years within which an action for damages arising out of work on improvements to real property, must be commenced.

SB-39 --AS AMENDED DO PASS - To provide for an intoxication test for persons arrested for driving while under the influence of liquor

SB-162--AS AMENDED DO PASS - To provide counsel for public employees, at employer's expense

SB-21 --AS AMENDED DO PASS - Prescribing uniform procedures for State Administrative Agencies

SB-34 --AS AMENDED DO PASS - To provide that the order discharging an executor or administrator must be made within 2 years

SB-189--AS AMENDED DO PASS - To allow attorney's fees for recovery of damages for destruction of property by persons under 18 years of age

☐ DO PASS
☒ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

January 26, 19 71

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 39

A BILL FOR AN ACT ENTITLED, "AN ACT TO PROVIDE FOR AN INTOXICATION TEST AND CONSENT THERETO, FOR PERSONS ARRESTED FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, PROVIDING FOR SUSPENSION UPON REFUSAL OF OPERATOR TO SUBMIT TO TEST, PROVIDING FOR AN APPEAL OF LICENSE SUSPENSION."

Respectfully report as follows: That SENATE Bill No. 39

Be amended as follows.

(1) Amend the title of the original bill in line 5 by deleting the word "CONTENT" and inserting in lieu thereof the word "CONSENT";

(2) Further amend Section 1, subsection (c) on page 2, lines 16, 17 and 18 by inserting a period (.) after the word "days" in line 16 and striking from said lines the following words: "upon first offense and upon subsequent such offense, within five (5) years thereof, for a period of one (1) year";

(3) Further amend Section 1, subsection (c) on page 2, line 18 by deleting the word "offense" and inserting in lieu thereof the word "refusal".

AND AS SO AMENDED, DO PASS

February 17, 1971

JUDICIARY COMMITTEE

The meeting was called to order in the law libray of the capitol at 9 a.m. on Wednesday, February 17 with Chairman Jeffrey J. Scott presiding. All members were present.

SENATE BILL 39 Senator Stan Stephens from District 19 gave a description of this bill, which would provde for an intoxication test and consent thereto, commonly known as the implied consent bill. He gave a detailed explanation of the history of this bill, and stated that the constitutionality of this matter has been thoroughly investigated and adjudicated. Mr. Albert Goke, the Highway Safety Director, gave a statement in support of this bill. He stated that Montana is one of the four states remaining without this law. Captain Ernie DeDycker from the Hihgway Patrol, gave a statement in support of this bill. Mr. Glen L. Martin, representing the Governor's Highway Safety Task Force, offered testimony in support of this legislation. Mr. Tom Mooney, representing theMontana AAA, gave a statement in support. Mrs. Sylvia Casey, from the Montana Safety Foundation, gave a statement in support. Marilyn Koetter, representing the Montana Council of Churches and the Montana Association of Women Highway Safety Leaders, gave a statement in support. (See Exhibit A.) Representative Pat McKittrick from Cascade County offered an amendment he felt should be in this bill. There were no opponents testifying. Questions were asked of the numerous witnesses. There were no further witnesses and the hearing on this bill was closed.

SENATE BILL 40 Senator Stan Stephens gave an explanation of this bill, which is a companion bill to Senate Bill 39. This bill is an act to reduce the amount of alcohol necessary to presume a person under the influence of intoxicating liquor from 0.15 per cent to 0.10 per cent. He presented a chart to the committe. (See Exhibit B.) Dr. John Pfaff, pathologist from Great Falls, gave a detailed statement as to how alcohol affects the human body. He stated how alcohol inhibits driving ability, stating that peripheral vision is first affected, then mental judgement, a state of tranquility exists, and then neuromuscular coordination is affected. He stated that normally the following levels of alcohol affect the human being in the following manner:

0.05 per cent alcohol	Some loss of neuromuscular coordination
0.10 per cent alcohol	Medically a maximum of a tolerable limit a person should have in order to drive - probably should be less.
0.15	Person considered dead drunk
0.30	Comatose state
0.40	Apt to die

department of institutions and to the transfer of such person to a juvenile facility by providing that prisoners of the state prison of the age of 25 or younger may be transferred to the Swan River Youth Forest Camp. Mrs. Dorothy Eck, representing the League of Women Voters, gave a statement in support of this bill. Questions were asked and the hearing on this bill was closed.

SENATE BILL 222 — Mr. Dean Reed, from the legislative auditor's office, appeared in support of this bill in place of Senator Thiessen. This bill provides for the disposition of unclaimed property in the state of Montana by transferring the duties from the office of the state treasurer to the state board of equalization. (See Exhibit A.) Mr. Tom Stoll from the state board of equalization gave testimony in favor of this bill and offered to answer any question that the committee might have. There were no further witnesses. Questions were asked and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE BILL 39 — Mr. Baeth moved that Senate Bill 39 be concurred in. Mr. Mather made a substitute motion to amend the bill on page 3, line 13 by striking the words "or proceeding"and also the same on line 23. Motion failed. Mr. Scott moved to amend on page 3, lines 13 after the word "criminal" by adding the material "or civil". Motion failed. Mr. Mather made a substitute motion that the bill be amended on page 1, line 21 by striking the material "in actual physical control of". Motion failed. Mr. Towe made a substitute motion that the bill be amended on page 4, line 3 after the word "acting" by adding the material "under the standards adopted by the state board of health and". Motion failed. The committee considered the amendment proposed by Representative McKittrick. (See Exhibit B.) Mr. Greely moved that this amendment be not adopted. Motion carried. A vote was taken on the original motion that Senate Bill 39 BE CONCURRED IN. Motion carried.

SENATE BILL 40 — Mr. Baeth moved that Senate Bill 40 BE CONCURRED IN. Motion carried.

A motion was made that the meeting be adjourned. Motion carried.

Jeffrey J. Scott, Chairman

Alice Omang, Secretary

r. Chairman:

am Marilyn Koetter and I represent the MONTANA ASSOCIATION OF WOMEN HIGHWAY SAFETY EADERS.

e strongly urge you to pass Senate Bills 39 and 40.

ur Association is comprised of women's clubs and organizations throughout the state. he following are included:

Montana Parent-Teachers Association
American Legion Auxiliary
Homemakers O.D.O.
Montana Cowbelles
Farm Bureau
Church Women United
Montana Extension Homemakers
B.P.W.
Montana Medical Auxiliary
VFW Auxiliary
Montana Federation of Women's Clubs
Montana Insurance Women
DAV Auxiliary
Montana Optometric Auxiliary
Montana Jayceens

iscussion of the companion bills were a major item of our discussion and consideration t the Governor's Conference on Highway Safety held recently in Helena. Representatives f the above groups were in unanimous agreement that this sensible legislation will save ives on Montana Highways.

ince that meeting the issue has been discussed in our separate groups, and our views ve been spoken and written to most of the members of this present Legislature.

ou may be interested to know that our survey of House and Senate members contacted in he last few weeks indicate this response:

EPLIES FROM 92 LEGISLATORS

1 FOR .... 3 AGAINST .... and 8 declared that they were in favor of the idea but needed o see an actual bill before they would say definitely whether they approved or not.

OW IS THE TIME to enact into legislation this Highway Safety measure which seems to ve such universal approval in Montana.

Signed:
Marilyn Koetter

☐ DO PASS
☐ DO NOT PASS
☒ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED

STANDING COMMITTEE REPORT

February 10, 19 71

MR. [redacted] SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 39

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR AN INTOXICATION TEST AND CONSENT THERETO, FOR PERSONS ARRESTED FOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, PROVIDING FOR SUSPENSION UPON REFUSAL OF OPERATOR TO SUBMIT TO TEST, PROVIDING FOR AN APPEAL OF LICENSE SUSPENSION."

Respectfully report as follows: That SENATE Bill No. 39

~~DO PASS~~ BE CONCURRED IN

House Committee Report Form

[redacted] Chairman.

frozen food plant, commercial food processor *or perishable food dealer.*

'State board.' (8) 'State board' means the state board of health.

'Department.' (9) 'Department' means the state department of health.

'Executive officer.' (10) 'Executive officer' means the director of the state department of health.

'Perishable food dealer.' *(11) 'Perishable food dealer' means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public."*

Approved March 1, 1971.

CHAPTER NO. 131

An Act to Provide for an Intoxication Test and Consent Thereto, for Persons Arrested for Driving While Under the Influence of Intoxicating Liquor, Providing for Suspension Upon Refusal of Operator to Submit to Test, Providing for an Appeal of License Suspension.

Be it enacted by the Legislative Assembly of the State of Montana:

Motor vehicle operator—consent to intoxication test.

Section 1. **Chemical blood, breath, or urine tests.** (a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 32-2142, R.C.M., 1947, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The arresting officer may designate which one of the aforesaid tests shall be administered.

Arresting officer may designate test.

Consent not withdrawn.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section.

Effect of refusal.

(c) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in paragraph (a) of this section, none shall be given, but the Montana highway patrol board, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of sixty (60) days. Like refusal by a nonresident shall be subject to suspension by the board in like manner. All such suspensions are subject to review as hereinafter provided.

Sworn report.

Suspension for 60 days.

Notice of suspension.

Section 2. **Right of appeal to court.** (a) Any person whose license or privilege to drive has been suspended, as hereinbefore authorized, the board shall immediately notify such person in writing and such person shall have the right to file a petition within thirty (30) days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside and such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon thirty (30) days written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, whether the person was placed under arrest and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

Petition to district court.

Hearing.

Limitations on issues.

Determination by court order.

On trial or proceeding.

(b) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxi-

Admissible evidence.

cating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

Proof of refusal to submit to test.

(c) If the person under arrest refused to submit to the test as herein above provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor.

Other evidence.

(d) The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor.

Physician or registered nurse may take blood sample.

Section 3. **Administration of tests.** (a) Only a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

Person tested may select physician or registered nurse.

(b) The person tested may, at his own expense, have a physician or registered nurse, of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

Full information.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

No liability.

(d) No physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

Privacy.

(e) If the test given under the preceding section is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will

insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

Uniform standards.

(f) The Montana highway patrol board in cooperation with the state board of health or any other appropriate agency, shall adopt uniform standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary.

Severability clause.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

Repealing clause.

Section 5. All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 1, 1971.

CHAPTER NO. 132

An Act to Amend Section 32-2142, R.C.M., 1947, Reducing the Amount of Alcohol Necessary to Presume a Person Under the Influence of Intoxicating Liquor and Defining the Basis for Determining the Same; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1 Section 32-2142, R.C.M., 1947, is amended to read as follows:

Unlawful to drive under influence of liquor.

"32-2142. **Persons under the influence of intoxicating liquor or of drugs.** (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

Presumptions in criminal prosecutions.

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions: